IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

WP(C).No. 8168 of 2007(V)

PETITIONER:

S.PRASANNA KUMARI,
W/O.P.SREEKUMAR, AGED 47 YEARS,
HIGH SCHOOL ASSISTANT (MATHS),
P.T.M. HIGHER SECONDARY SCHOOL,
MARUTHOORKONAM, NEYYATTINKARA.

BY ADV. SRI.V.A.MUHAMMED
SRI.M.SAJJAD

RESPONDENTS:

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1. THE STATE OF KERALA REPRESENTED BY THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DEPUTY DIRECTOR OF EDUCATION, TRIVANDRUM.

3. THE DISTRICT EDUCATIONAL OFFICER, NEYYATTINKARA, TRIVANDRUM.

4. THE MANAGER, P.T.M. HIGHER SECONDARY SCHOOL, MARUTHOORKONAM, NEYYATTINKARA.

5. SRI.K.R.JAYAKUMAR, P.T.M. HIGHER SECONDARY SCHOOL, MARUTHOORKONAM, NEYYATTINKARA.

BY SR. GOVT. PLEADER SRI. T.T.MUHAMOOD
ADV. SRI.ELVIN PETER P.J.
SRI.S.RAMESH BABU

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 06/06/2007, ALONG WITH WPC NO. 9621 OF 2007 & CONN. CASE, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.8168/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1.	COPY OF THE STATEMENT OF RELINQUISHMENT
EXT. P2.	COPY OF THE WITHDRAWAL OF RELINQUISHMENT
EXT. P3.	COPY OF THE ORDER NO. B4/9838/05 OF THE DIST. EDUCATIONAL OFFICER
EXT. P4.	COPY OF THE ORDER NO. B5/2997/06/D.Dis. OF THE DY. DIRECTOR OF EDUCATION
EXT. P5.	COPY OF THE CIRCULAR NO.ET3/91423/01 OF THE GOVT.
EXT. P6.	COPY OF THE G.O.(P) NO.20/2004/P&ARD OF THE GOVT.
EXT. P7.	COPY OF THE ARGUMENT NOTES
EXT. P8.	COPY OF THE ARGUMENT NOTES
EXT. P9.	COPY OF THE APPLICATION SUBMITTED BEFORE THE MANAGER
EXT. P10.	COPY OF THE G.O. (Rt.) NO. 1056/07/G.Edn. OF THE GOVT.
EXT. P12.	COPY OF THE WITHDRAWAL OF RELINQUISHMENT

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NOS. 8168, 9621 & 14593 OF 2007

Dated this the 6th day of June, 2007

J U D G M E N T

The short but interesting question that has cropped up in these three writ petitions is whether the withdrawal of relinquishment of promotion by the petitioner to the post of Headmaster is legally valid and sustainable.

2. Relevant facts which are necessary for disposal of these cases are stated briefly hereunder:

3. The post of Headmaster in the P.T.M. Vocational Higher Secondary School was due to fall vacant on April 1, 2006. Smt. Prasanna Kumari, petitioner in W.P.(C). No.8168/07, ("hereinafter referred to as the teacher") tendered Ext.P1 letter before the Manager of the school on October 25, 2005 relinquishing her claim for the post "temporarily" and up to March 31, 2007. But shortly thereafter, the teacher withdrew the relinquishment through Ext.P2 communication dated November 7, 2005. The request for withdrawal was accepted by the controlling officer on November 25, 2005, as revealed from Ext.P3.

The above order passed by the controlling officer was challenged by the Manager (petitioner in W.P.(C). No.14593/07) before the Deputy Director of Education. By Ext.P4 order dated April 20, 2006 the Deputy Director allowed the appeal and held that temporary relinquishment made by the teacher would prevail.

4. In the meanwhile, the Manager appointed Sri. K.R. Jayakumar, the next seniormost teacher, as Headmaster, who has filed W.P.(C). No.9621/07 to which I will refer a little later. The matter was taken up before the Government by both the teacher and the manager. In its order dated March 8, 2007, a copy of which is on record as Ext.P10 in W.P.(C). No.8168/07, the Government took the view that approval of appointment of Sri. Jayakumar as Headmaster from April 1, 2006 to March 31, 2007 was valid. The Government further directed that since the teacher was the seniormost High School Assistant she be appointed as Headmistress with effect from April 1, 2007. The teacher, the manager and Sri. Jayakumar, the present incumbent, have challenged the above order passed by the Government apparently for different reasons.

5. As noticed already, the only question that arises for consideration is whether a teacher can withdraw her relinquishment for promotion before it is accepted by the competent authority. The imbroglio in these cases can be resolved once the above question is answered. Therefore it is not necessary to refer to the various other contentions raised by the parties at length.

6. It is trite that an employee can withdraw his resignation from his job, or relinquishment of promotion to a higher post, at any point of time before it is accepted by the authority concerned. As mentioned earlier, the controlling officer had found that there was valid reasons for the teacher to withdraw her relinquishment. He had held so in Ext.P2 order. Learned counsel for the manager and the present incumbent (Sri. Jayakumar) have raised a contention that the relinquishment could not have been allowed to be withdrawn, since the letter or communication in this regard was not submitted by the teacher before the manager. But, in response to the said contention taken by the manager, the teacher has filed an affidavit controverting the above statement made by the manager. It has been asserted by the teacher

that the "withdrawal letter" was in fact handed over to Sri. Abhilash, the son of the then manager, Smt. Santha Kumari Amma (present manager is her husband). It is pertinent to note that Sri. Abhilash was working as Vocational Lecturer in the same school. Anyhow, it is the admitted position that the withdrawal letter was in fact received by the controlling officer and he had acted on it. It is also beyond controversy that the manager was also heard before Ext.P3 order was passed by the controlling officer while upholding the validity of withdrawal of relinquishment. In short, the fact remains that the controlling officer found that the withdrawal letter was submitted by the teacher well before the "relinquishment" was accepted. In that view of the matter, neither the manager nor the present incumbent can be heard to say that there was no valid withdrawal of relinquishment of promotion.

7. The question with regard to the right of an employee to withdraw resignation has been settled by a catena of decisions of this Court reported in ***Kumar v. State of Kerala*** (2002 (2) KLT 630), ***George v. State of Kerala*** (1998 (2) KLT 637) & ***Hyderali v. State of Kerala*** (2001 (1) KLT 763). Having perused the above judgments

carefully, I am satisfied that the rationale adopted and the principles laid down in those judgments in the matter of withdrawal of resignation would squarely apply in the case of withdrawal of relinquishment of promotion also.

8. What remains to be considered is whether the teacher would be entitled to claim the post of Headmistress from the date when it fell due or whether she can be placed as Headmistress with effect from April 1, 2007, as ordered by the Government. It is the admitted position that Sri. Jayakumar was appointed as Headmaster with effect from April 1, 2006 till March 31, 2007 and his appointment had been approved by the District Educational Officer. It was therefore that the Government had ordered that he could be allowed to continue till March 31, 2007. Sri. Jayakumar has also challenged Ext.P19 order issued by the DEO, directing him to handover charge of the school to Smt. Prasannakumari (petitioner in W.P.(C) No. 8168/07). In view of the finding entered by me earlier, the said contention raised by Sri. Jayakumar cannot be sustained. He has to handover charge on expiry of his term and the manager has to appoint Smt. Prasannakumari as

Headmistress in compliance with the directions issued by the Government. It is submitted by the learned counsel on behalf of the teacher that she will be satisfied is she is allowed to function as Headmistress from today. The above submission is recorded. However, Sri. Jayakumar will be entitled to draw salary and allowances attached to the post of Headmaster for the period during which he has worked.

Therefore, W.P.(C) Nos. 9621/01 & 14593/07 are dismissed. W.P.(C) No. 8168/07 is disposed of with a direction to the manager to issue appropriate orders appointing the petitioner as Headmistress, if there is no other legal impediment.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007